



POLICE DEPARTMENT

December 15, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Wayman Manning
Tax Registry No. 935851
Police Service Area 4
Disciplinary Case No. 2011-5357

The above-named member of the Department appeared before me on April 7, 2014, charged with the following:

1. Said Police Officer Wayman Manning, while assigned to Police Service Area 4, on or about and between February 1, 2010 and July 21, 2011, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer on multiple occasions assisted and/or requested the assistance of other members of the service to prevent the processing and adjudication of multiple summonses issued to various motorists.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
GENERAL REGULATIONS

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office, and Respondent was represented by Stuart London, Esq.

Respondent, through his counsel, pleaded Guilty to the February 1, 2010 incident and entered a plea of Not Guilty to the June 12, 2010 incident in the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having Pleaded Guilty to the February 1, 2010 incident date, is found Guilty. Respondent is found Not Guilty of the June 12, 2010 incident date.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Bryan Brooks as its sole witness.

Sergeant Bryan Brooks

Brooks, a 17-year member of the Department, was previously assigned to Bronx's Internal Affairs Bureau, (IAB) Group 21. While assigned to IAB, Brooks worked as an investigator assigned to corruption and misconduct cases. Brooks' duties included conducting the questioning of officers in official Department interviews.

While in IAB, Group 21, Brooks was assigned to work on a case pertaining to ticket fixing that occurred within the Police Department. He worked on this investigation for over a year. The allegation of this misconduct came to the Department through a wiretap investigation. These wiretaps were conducted on members of the service who were assigned to the Patrolmen's Benevolent Association (PBA). The members of service assigned to the PBA were delegates assigned to different commands. Brooks had the opportunity to review and listen to these wiretaps, which was later followed by his questioning of the officers. This allowed Brooks to discover the process by which members of the service would seek assistance in having tickets fixed.

During Brooks' investigation, he came across Respondent's request for tickets to be taken care of. There were two specific incidents in the wiretap where Respondent could be heard asking for tickets to be taken care of. The first date in which Respondent was heard asking to have a ticket taken care of was on February 1, 2010. Brooks said that a transcript of the conversation between Police Officer McGee and Respondent allowed him to determine the date of their discussion to be February 1, 2010 (see Department's Exhibit [DX] 1). Respondent and McGee are both PBA delegates assigned to different commands.

When speaking about the first date in question, February 1, 2010, Brooks stated that the transcript of the conversation was very detailed since McGee wanted a lot of information from Respondent. Among the information that McGee wanted from Respondent was the tax number, names, and plate number. Brooks said that McGee "asked for everything that he possibly could get." This differs from other requests, which Brooks said were not as detailed as those made by McGee to Respondent. The other requests would contain minimal information such as a name and summons number. Brooks stated that there was no follow-up to see whether or not the ticket was actually taken care of.

When discussing the other date in question, June 12, 2010, Brooks stated that he also reviewed the transcript of a conversation between Respondent and Officer Eugene O'Reilly, where Respondent once again asked to have a ticket taken care of (see DX 2). O'Reilly was also a PBA delegate from a different command. In comparison to the February 1, 2010, request made by Respondent, Brooks said that this was not as detailed since O'Reilly simply asked for the summons number and tax number. The Department

investigators attempted to find out if the summons was processed through the courts.

However, the summons could not be located. With respect to the request made by Respondent on June 12, 2010, this summons was never found by investigators.

During *voir dire* by Respondent's attorney, Brooks was questioned about DX 3A, an internal office worksheet. Brooks said he used this document as an outline, prior to questioning the officers involved in the investigation; however, he did not have an exact date as to when it was prepared. When questioned about whether or not he had checked the accuracy of the document's findings, Brooks said that he could not recall. Brooks did not prepare DX 3A, and he is not aware of who prepared it.

During further direct examination, Brooks said that he interviewed Respondent, where he admitted to making a request to have a ticket taken care of on February 1, 2010. Initially, Respondent was vague and unsure when asked to recall specific details during his interview with Brooks; however, after the recorded conversations were played, Respondent admitted that he made a request to take care of tickets on both dates.

On cross-examination, when asked if the first ticket, February 1, 2010, was taken care of, Brooks said, "No." Brooks said that according to DX 3A¹, the person who received the ticket was Police Officer Suarez and he was found guilty. When speaking about the second ticket, issued June 12, 2010, Brooks agreed that it would have been proper investigation to look up the tax number of the officer who issued the summons; however, he is unable to recall if he did so in this case. Brooks said that every officer listed on the worksheet was spoken to by him or someone from Group 21. He is not certain as to whether he or someone else prepared the worksheet.

¹ DX 3A was not taken into evidence because Brooks did not prepare the document nor did he confirm the accuracy of what was written in it.

On redirect examination, Brooks explained that since the investigation consisted of many officers, once it came to his attention that another officer was involved in the ticket fixing investigation, a "file of investigation" would be done and the officer would be spoken to. Brooks stated that he was not the only investigator involved in this investigation. Brooks was part of the administrative team, where they conducted the official Department interviews of the officers. Brooks explained that he may not recall many of the interviews that he conducted since he was involved in the investigation of over eight-hundred officers, and he questioned close to four-hundred fifty officers himself. For Brooks, attempting to recall exact dates where he had spoken with a specific person "would be nearly impossible."

On recross-examination, Brooks stated that Respondent admitted to making the requests for both tickets during his official Department interview, however, when Brooks was presented with the transcript for the interview, he could not find the statement where Respondent admitted to making two requests to take care of tickets, so he decided to withdraw his statements.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent has been a member of the service for almost ten years and is assigned to Police Service Area (PSA) 4. While assigned to PSA 4, Respondent works patrol during the day tour. Respondent is also a PBA delegate. Respondent said that he did

make a request to McGee on February 1, 2010. Respondent recognized his voice on the tapes that were played during the interview. Respondent, however, was not sure as to whether the ticket was actually taken care of. McGee never responded back to Respondent to let him know what happened with the ticket. Respondent also stated that McGee had a reputation in the Department for saying that he would do something and then not do it.

Respondent said that there was a second tape, recorded on June 12, 2010, where he was intercepted speaking with O'Reilly. Respondent admitted that he did give a tax number, as well as a summons number to O'Reilly during that conversation but he did not recall why he did that. Respondent did not remember who issued the summons. Respondent was not even sure as to whom the ticket was issued to. Respondent did not remember having any further discussions with O'Reilly regarding the ticket. He did not have any recollection regarding the conversation with O'Reilly.

On cross-examination, Respondent said that he reached out to McGee in order to have a ticket taken care of for Suarez. Suarez worked in Respondent's command. Suarez had asked Respondent to take care of the ticket for him. As a delegate, Respondent's duties were to "be the bridge between the cops and bosses." When Suarez was called in to an official Department interview, Respondent went along because the notification said to "bring representation." There were three delegates assigned to the command, so whoever was available would go to the interview. When Respondent arrived; he was not allowed to go inside.

Respondent said that he has "no idea" why he was giving O'Reilly a summons number and the issuing officer's tax number during their phone conversation.

Respondent said that when he called others to have tickets taken care of, he would give them a tax number, summons number, and a command location. Respondent would not ask them questions. Respondent said no one had ever reached out to him to see if he could take care of a ticket for them.

Respondent said that when he reached out to McGee on February 1, 2010, he gave him his name, tax number, command, summons number and a plate number. Respondent agreed that it was normal for this information to be given over the telephone. The delegates did not discuss taking care of summons while in meetings or events.

Respondent said that "everything" had to be given when asking to have a ticket taken care of. All information pertinent to the summons must be given to the delegate to have the ticket taken care of. A summons number alone would not suffice. Respondent said when he was heard on the wiretap giving a delegate a summons number on February 1, 2010, it helped to identify the summons.

On June 12, 2010, when Respondent called O'Reilly and gave him a summons number, he insisted that he did not know why he gave him that information. Respondent said that he did not request that summons to be taken care of by O'Reilly. Respondent did not know Hilliard Gray, the motorist who was issued the summons. Respondent had no idea where he obtained the tax and summons number from when he gave it to O'Reilly. Respondent said that it had been so long that he could not remember reaching out to O'Reilly and having a conversation with him.

On redirect examination, Respondent said that other reasons for reaching out to delegates included officers getting hurt and needing a delegate in the area, and the inability to make it to an interview, at which time they would have another delegate fill in

for them until they could make it. Respondent said that he was the filter between precincts. If an officer had a question he or she would come to him, and if needed he would relay that message to the delegate in another precinct. If an officer wanted to contact another precinct and give them the summons and tax number then Respondent would call that precinct to send that information. He agreed that he would not be able to remember each and every time that it happened. Respondent said this was part of his job.

FINDINGS AND ANALYSIS

Respondent is charged with preventing the processing and adjudication of multiple summonses. The evidence presented at trial established that there are two summonses at issue. These summonses were identified during an extensive wiretap investigation by the Department, in conjunction with the Bronx District Attorney's Office.

With respect to the first incident on February 1, 2010, Respondent admitted to taking care of the summons. Respondent was recorded on the wiretap making such request to McGee, the PBA delegate from the 43 Precinct, (See DX 1). DX 1 undoubtedly confirms Respondent's admission. Whether or not Respondent's request was honored by McGee is not relevant to the specification.

As there is no dispute concerning the February 1, 2010 summons, Respondent is found Guilty of requesting the assistance of another member to prevent the processing of this summons.

The only issue that remains is whether Respondent requested assistance from another member to prevent the adjudication of the June 12, 2010 summons. On June 12,

2010, Respondent was recorded on the wiretap speaking to O'Reilly, the PBA delegate from the 45 Precinct. The Advocate urges the Court to consider this conversation as dispositive of Respondent's intent that he spoke to O'Reilly for the purpose of taking care of the summons. However, Respondent only gave a summons number and a tax number, and in the absence of further corroborating evidence, this Court cannot find Respondent Guilty of fixing the June 12, 2010 summons.

The telephone conversation about the summons on June 12, 2010, lacks the degree of specificity found in the February 1, 2010 conversation. For instance, in the February 1, 2010, conversation, Respondent specifically referred to "taking care of a ticket for me," and when asked by McGee, he offered McGee a detailed description of the circumstances surrounding the summons. Respondent gave McGee the tax number of the issuing officer, the license plate number of the vehicle, the reason why the summons was issued, the name of the person to whom the summons was issued to, and the summons number.

Whereas, in the June 12, 2010 telephone conversation, Respondent only submitted a summons number and a tax number. No other information was requested by O'Reilly or offered by Respondent, and there is no evidence of any future correspondence between them. Additionally, Respondent also testified that it was normal for information such as the issuing officer's name and summons number to be given over the phone for matters other than fixing a ticket. Respondent explained that as a delegate, he may be inquiring about an officer who was hurt, or trying to get another delegate to appear at an interview. He further explained that if he were calling to fix a ticket, he would not just give the summons number and the officer's name. He would also give the

license plate number, the command, and what the summons was issued for. Further, during Respondent's interview with Brooks, Respondent admitted that he had taken care of the first summons but did not admit to taking care of the second summons. Lastly, although Brooks, on direct examination, testified that Respondent had admitted to taking care of both summonses, he withdrew this testimony during cross-examination.

The cases that the Advocate cites involve other Respondents who had admitted to, and/or were found guilty of requesting the assistance of another member of the service to prevent the adjudication of two summonses. However, in the instant case, the Court lacks the sufficient facts necessary to conclude by a preponderance of the credible evidence that Respondent requested the assistance of another member of the service to prevent the adjudication of the June 12, 2010 summons.

As such, Respondent is found Not Guilty of preventing the adjudication of the June 12, 2010 summons.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 9, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Many officers have been brought up on similar charges and where an officer has been accused of preventing the adjudication of one summons, the matter is handled at the command level. This Court has no authority to return a matter for Command Discipline

and can only make a recommendation in accordance with the Administrative Code. Consequently, based on the seriousness of any amount of summons fixing, the recommendation in this case is the forfeiture of ten vacation days, a penalty consistent with precedent (*See Case No. 2011-6384 [July 16, 2013]*), as well as the maximum that can be imposed with a Command Discipline.

Respectfully submitted,



Claudia Daniels-DePeyster

Assistant Deputy Commissioner – Trials

APPROVED

JAN 29 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

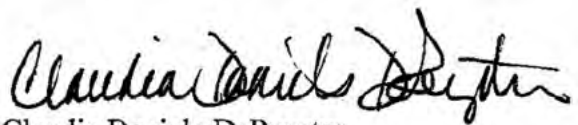
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER WAYMAN MANNING
TAX REGISTRY NO. 935851
DISCIPLINARY CASE NO. 2011-5357

Respondent received an overall rating of 4.0 "Highly Competent" in 2013 and 2012, and a 3.5 "Highly Competent/Competent" in 2011 on his last three, formal, annual evaluations. He has one Excellent Police Duty medal. [REDACTED]
[REDACTED]

[REDACTED] On May 7, 2009, he pleaded Guilty to a domestic altercation and forfeited 13 vacation days and cooperation with counseling.

For your consideration.


Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials